



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos: UI-2024-001714
UI-2024-000800

First-tier Tribunal Nos:
PA/55961/2022
LP/01882/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16 July 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**HA
(ANONYMITY ORDER MADE)**

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Heybroek counsel instructed by Kalsi Solicitors
For the Respondent: Mr K Ojo, Senior Home Office Presenting Officer

Heard at Field House on 21 June 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to

identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Iran born on the 1 December 2004. He arrived in the UK on the 17 October 2021 and claimed asylum the following day. This application was refused in a decision dated 7 December 2022. The Appellant appealed and his appeal came before the First-tier Tribunal for hearing on the 8 January 2024.
2. In a decision and reasons promulgated on 16 January 2024, the judge dismissed the appeal, finding at [16] and [17] that the Appellant's account of the incident which led to him leaving Iran was not credible. It was not accepted the Appellant was politically motivated or that he would be wanted by the Iranian authorities on return. At [18] the Appellant stated in oral evidence he had received threats by phone but since he had not told his legal representative of these threats, the judge thought this was implausible and at [19] to [23] the judge went on to reject the Appellant's evidence in relation to his facebook account. At [24] the judge found following HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) that the Appellant would be questioned on return but given she did not find his political beliefs were genuine and he could close his facebook account, this would mitigate any risk of persecution on return.
3. Permission to appeal was sought in time on the basis that the judge materially erred in that:
 - (1) it was not reasonably open to her to find there was no other supporting evidence that the Appellant had a stomach upset during his Asylum Interview Record which may have impacted on his ability to give a consistent account;
 - (2) it was not reasonably open for the judge to find the Appellant not credible on the basis of inconsistencies in light of his age and clear distress;
 - (3) it was not reasonably open to the judge to find the Appellant had not given an adequate explanation as to differences or discrepancies in his facebook account including the spelling of his name, his date of birth and his gender when he had not actually been asked about this in the appeal hearing, nor had it been raised previously by the Respondent;
 - (4) it was not reasonably open to the judge to make adverse findings on plausibility as to threats given that the Appellant offered to show the threatening messages to the judge but she refused to permit this;

- (5) whilst *HB (Kurds) Iran* was still trite law, the country situation had worsened considerably since that time and in particular since the death of Mahsa Amini in 2023; and
 - (6) there was no indication that the judge engaged with the objective material or submissions made in relation to supplementary evidence and this was a material error in that the judge failed to take this into account or failed to make findings as to why she rejected this material.
4. Permission to appeal was granted on a partial basis by First-tier Tribunal Judge Dainty on the basis that:
- “It was however arguably an error of law in the credibility assessment to have relied on the failure to tell any legal representative about the threat as implausible without also considering as part of that assessment that the Appellant was willing to hand his phone over to be inspected by the judge, which arguably tends to suggest that something akin to a threat existed on the phone and the Appellant was not seeking to conceal the content. This may have affected the overall assessment. Therefore on this narrow basis there is an arguable error of law and permission is partially granted.”*
5. The Appellant’s representative submitted renewed grounds of appeal, in time. On 14 May 2024, Upper Tribunal Judge Pickup granted permission to appeal in relation to the remainder of the grounds of appeal.
 6. Ms Heybroek submitted a skeleton argument on the 12 June 2024 which was in line with the grounds of appeal. She relied on both the grounds of appeal and those submissions set out in the skeleton argument, focusing, in particular, on the last two grounds and the fact that the supplementary bundle, which was served shortly prior to the hearing, did contain a considerable amount of material concerning the worsening situation for Kurds following the death of Mahsa Amina.
 7. Whilst Ms Heybroek accepted the judge needed a reason to go above and beyond any country guidance decision, effectively what she had done was just to ignore this evidence in that she had not engaged with it at all and this was a material error of law. Ms Heybroek further accepted that whilst being Kurdish *per se* is not sufficient in light of the CG decision in *HB (Kurds) Iran (op cit)* to warrant a grant of protection, when one layered together the different elements and the hair trigger approach of the Iranian authorities, in particular in relation to any *sur place* activities, that this did create a risk. Ms Heybroek submitted that this was egregious enough to have affected the overall outcome of the determination and that the decision should be set aside.
 8. In his submissions, Mr Ojo relied on the Rule 24 response to the grant of permission to appeal in respect of ground 4, dated 11 March 2024. In relation to the remainder of the grounds, he submitted that ground 1, having a stomach complaint prior to the interview is not the same as

having a stomach complaint during the interview and at [16] of the decision the judge gave sustainable reasons for concluding she could rely on the Appellant's interview. He confirmed he was fit and well. There was a responsible adult with him and the inconsistencies the judge found were not just linked to the asylum interview but when one looks at [16] and [17], the judge also took into account the Appellant's age at the time when she assessed his case.

9. In terms of the facebook evidence, whilst this was not raised during cross-examination, Mr Ojo submitted there were other reasons why the judge found that the facebook evidence did not demonstrate the Appellant would be of interest to the Iranian authorities, for example the downloads were incomplete, it was not possible to find his facebook picture and this is why the judge concluded that the Appellant did not have any genuinely held political opinions and that someone else was directing or controlling his facebook account.
10. In relation to ground 2, Mr Ojo conceded that this was probably the strongest ground of challenge. He submitted that the skeleton argument before the FtT did not raise or address the new evidence contained in the supplementary bundle, though he acknowledged it predated that evidence. But he submitted there was no indication from reading the judge's decision that the new evidence was drawn to her attention or pursued with any vigour and this had not been clarified in the renewed grounds of appeal either. There was no reason to think the judge had not taken account of all the evidence.
11. In reply, Ms Heybroek submitted the very fact the judge did not indicate she had taken the new evidence into account was a very narrow line to tread in terms of her role as counsel and not becoming a witness. She maintained her submission that the judge has not commented on that evidence because she has not taken it into account. The judge followed the country guidance of the Home Office CPINs but has given no indication she took account of the evidence that postdates *HB (Iran) (op cit)* and the CPINs and the heightened level of interest in relation to the treatments of Kurds in Iran.
12. In relation to the facebook evidence, whilst it was correct that it was not put to the Appellant his facebook downloads were addressed in the supplementary bundle as well as the main bundle: see page 144. Also, it was not simply facebook activity *per se* but the fact that there are photographs of the Appellant protesting on his facebook page. A friend has assisted him in putting things up and there are several examples of him at protests. Essentially it was never put to the Appellant as to why his gender was different on his facebook account and it was procedurally unfair to take this point against him.
13. I reserved my decision which I now give with my reasons.

Findings and reasons

14. I find material errors of law in the decision and reasons of the First tier Tribunal Judge in the following respects:
- 14.1. Firstly with regard to the refusal by the judge to consider the threatening messages the Appellant said that he had received which he had on his phone in court and offered to show. Whilst the judge was not, of course, obliged to consider this evidence which had not previously been served, I find that she erred at [18] in finding that she was not satisfied that there is any threat to the Appellant and in finding that it was not plausible that he would not think it relevant to share this evidence with his legal representatives bearing in mind his young age and illiteracy.
- 14.2. I further find that the judge erred in failing to refer to any of the evidence contained in a supplementary bundle served in relation to the increased persecution of Kurds following the murder of Mahsa Amina in 2002. Whilst the CG decision in *HK (Iran) (op cit)* was of course binding upon her, this evidence was at least arguably material in terms of the assessment of risk on return to the Appellant who the judge accepted at [24] that it was likely that the Appellant would be questioned on return to Iran.
- 14.3. I find the judge erred at [22] in finding that the facebook evidence was of limited weight given *inter alia* that his profile information refers to a different date of birth gender and spelling of his last name when these issues were apparently raised for the first time in the Respondent's submissions and were not put to the Appellant to provide him with the opportunity to comment or provide an explanation. This is procedurally unfair. It also contributed to the judge's decision to reject as not genuine the Appellant's political beliefs at [23].
- 14.4. I further find the judge erred at [24] in finding that as the Appellant's asserted political beliefs are not genuine and it was open to him to close down his facebook account that he would not be at risk of persecution in circumstances where the CG decision makes clear at [7] that: "*Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.*" And at [9] that: "*Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment.*"
15. In light of the fact that as a consequence of my findings above, the decision will need to be re-made in its entirety and bearing in mind the guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) I remit the appeal for a hearing *de novo* before the First tier Tribunal. The Appellant's representatives would be well advised to ensure that all the evidence upon which the Appellant wishes to rely eg transcripts of threatening messages and any updating witness statement is served in accordance with directions upon the First tier Tribunal.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 July 2024